

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57231; File No. SR-CBOE-2007-152)

January 30, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Relating to a Hybrid Agency Liaison (“HAL”) Step-Up Rebate and Pass-Through of Certain Linkage Related Costs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2007, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. On January 16, 2008, CBOE filed Amendment No. 1 to the proposed rule change. On January 23, 2008, CBOE filed Amendment No. 2 to the proposed rule change, and on January 28, 2008, CBOE filed Amendment No. 3 to the proposed rule change.<sup>3</sup> CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 28, 2008, the date on which the Exchange filed Amendment No. 3. See 15 U.S.C. 78s(b)(3)(C).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

CBOE proposes to: (i) establish a HAL step-up rebate, and (ii) pass through to members certain costs related to Intermarket Option Linkage (“Linkage”) Principal orders. The text of the rule proposal is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

HAL Step-Up Rebate

HAL is a system for automated handling of electronically received orders that are not automatically executed upon receipt by the Hybrid Trading System ("Hybrid"). CBOE Rule 6.14 governs the operation of the HAL system.

Orders received by the HAL system are electronically exposed to all CBOE market-makers appointed to the relevant option class, as well as to all members acting as agent for orders at the top of the Exchange’s book in the relevant option series. This exposure and a subsequent allocation period (together, the "HAL auction") afford crowd members an opportunity to match the away national best bid or offer ("NBBO") price. If any portion of an exposed order remains

unexecuted at the end of a HAL auction, then the remaining order would be booked if it is a limit order that is not marketable, or, if marketable, routed to the exchange showing the NBBO via Linkage.

In order to provide an incentive to market makers to execute orders at CBOE, versus routing orders away via Linkage, the Exchange proposes to establish a program whereby the Exchange would provide a rebate to market-makers that “step-up” and trade all or part of certain orders on the HAL system. Specifically, the Exchange will rebate to a market-maker \$.20 per contract against transaction fees generated from a transaction on the HAL system in a penny pilot class, provided that at least 80% of the market-maker's quotes in that class (excluding quotes in LEAPS series) in that same month were on one side of the NBBO. Market-makers not meeting this 80% criteria would not be eligible to receive a rebate. The Exchange believes the HAL rebate will allow market-makers to compete better for order flow in the penny pilot classes.

#### Pass-Through of Linkage P Order Costs

Pursuant to Section 21 of the CBOE Fees Schedule, the Exchange provides certain rebates and credits to Designated Primary Market-Makers ("DPMs") for fees they incur related to the execution of outbound Principal orders ("P orders") on behalf of orders that are for the account of a broker-dealer (i.e., "B" and "F" origin codes).

The Exchange proposes to amend this program in two respects. First, the Exchange proposes to expand the program to apply to any non-customer order underlying a P order.<sup>6</sup> Second, in order to recover the significant costs of this program, the Exchange proposes to pass through to the member that originated the underlying order the total amount of the credits paid

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<sup>6</sup> The Exchange is expanding the application of the P order program due to the fact that HAL now processes market-maker orders in addition to broker-dealer orders.

by the Exchange to the DPM under the program (i.e., away exchange transaction fee, and OCC, clearing firm and Sales Value fees). The Exchange represents that members seeking to send orders to the Exchange that are not routed away through the Linkage (thereby avoiding any pass-through Linkage charges) may do so by marking orders sent to CBOE with an Immediate or Cancel ("IOC") designation. IOC orders are not routed to other market centers, instead if they cannot be executed on CBOE they are cancelled.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder because it establishes or changes a due, fee, or other

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

charge applicable only to a member. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2007-152 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-152. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

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<sup>10</sup> 17 CFR 240.19b-4(f)(2).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-152 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).